IN THE HITH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P.No. 98 OF 2002

Petitioners : ::

1. Ku.Khushbu Bagdi (Minor)
aged about 17 years
D/o. Shri Vijay Bagdi
being the father and natural
guardian
studying in Class-XII
in Holy Cross H.S.School
Pension Bada, Raipur
resident of Budapara, Raipur(CG.)

2. Ku. Sruti Khandelwal (Minor)
agaed about 17 years
D/o. Dr.Govind Khandelwal
being the father and
natural guardian, resident
of Samata Colony, Raipur (C.G.).

3. Gaurav Ahluwalia
aged about 18 years
S/o. Shri S.K.Ahluwalia
studying in class-XII
in Holy Cross H.S.School
Bairan Bazar, Raipur, resident
of Bairan Bazar, Raipur(C.G.).

4. Piyush Birla
S/o. Shri K.J.Birla
aged about 18 years
resident of Rajendra Nagar
Raipur (C.G.).

P.R. No. 93/02
Process Fee Sanctioned Rs.
dated 9/1/02

CERTIFIED COPY
9/1/02
CLERK TO A.G. BILASPUR

Versus

Respondents :: 1. State of Chhattisgarh
Through Secretary
Public Health, Family Welfare
and Medical Education
D.K.S.Bhawan,
Raipur (C.G.).

2. The Secretary
Department of Education
Government of Chhattisgarh
D.K.S.Bhawan
Raipur (C.G.).

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PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS AND DIRECTIONS INCLUDING WRIT OF MANDAMUS AND FURTHER DIRECTIONS ETC.

(92) A.F.R

**WRIT PETITION NO. 98 OF 2002**

Ku. Khushbu Bagdi & Three others

- Versus -

State of Chhattisgarh and another

**ORDER** Post for 9.4.2002.

Sd/-
Fakhruddin
Judge

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WRIT PETITION NO. 98 OF 2002

Ku. Khushbu Bagdi & Three others

-Versus-

State of Chhattisgarh and another

Petitioner by Shri Sandeep Dubey, Advocate.

Respondents by Dr. N.K.Shukla, Additional Advo ıte General with Shri P.S.Koshy, Govt. Advocate.

Interveners by Shri Manindra Shrivastava, Advoca e with Shri Ashish Shrivastava, Advocate.

ORDER

By Justice Fakhruddin.

1. By this petition under Article 226/ 27 of the Constitution of India the petitioners Ku. Kh shbu Bagdi, Ku. Sruti Khandelwal, Gaurav Ahluwalia and Piyush Birla have prayed for issuance of appro ıate writ or direction, commanding the respondents for ıolding joint Entrance Examination (Pre Medical T t) for the successful candidates of Class-XIIth from the examinations conducted by Chhattisga Board of Higher Secondary Education, Centra Board of Secondary Education (CSEB) and In an School Certificate Examination (ISC) for admissic in medical colleges including veterinary and dental c leges in the State from the current academic session 2( )2 onwards.

2. While giving their own details the petitioners have submitted that the petitioner No. 1 is a student of Class-XII of Holy Cross Higher Secondary School, Pension Bada at Raipur and she claims that she has a good academic record and expects to pass the class-XIIth Board examination to be conducted by the Chhattisgarh Board of Higher Secondary Education. It is stated that petitioner No.4 has already passed Class-XIIth examination from M.P. Board of Secondary Education in 2001 and had appeared in the PMT test but could not be selected and is preparing hard to appear in PMT whenever it may be conducted by the respondents. Petitioner No.2 contends that she has secured a position in the merit list in Class-XIIth conducted by The Board of Secondary Education in 2001 and had appeared in PMT and is working hard.

3. The petitioners in this petition have contended that the State of Chhattisgarh has taken a decision not to hold Pre Medical Test Entrance Examination for admission to M.B.B.S. Course for the year 2002 and this decision has been published in a daily newspaper Navbharat dated 2nd January 2002 (Annexure P/2). The petitioners further contended that this decision not to hold the test is illegal and contrary to the settled position of law. The petitioners have referred to the Medical Council of India Regulations on Graduate Medical Education, 1997 and especially Regulation No.5. They have also referred to a decision of Apex Court reported in (1998) 3 SCC 183 (Ravindra Kumar Rai Vs. State of Maharashtra and others).

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4. In para 5.11 of the petition the petitioners have made allegation to the effect that the record of the Chhattisgarh Board of Secondary Education is not appreciable and they have referred to Annexure P/3 newspaper report published in daily Bhaskar dt. 9.5.2001 whereby it is stated that about 2000 cases of copying (unfair means) by the students were reported. On the basis of press clippings published in daily Bhaskar dated 1.6.2001(Annexure P/4) it is also stated that the Board of Higher Secondary Education does not have sufficient staff to conduct examination, as the employees are not allocated. Another newspaper clippings published in daily Bhasker dated 1.7.2001(Annexure P/5) has been reffered, which is to the effect of inefficiency regarding valuation of answer books of the candidates by teachers of other subjects.

5. The petitioners have urged ground No.6.6 in the petition which is quoted below:

"6.6 For the reason that the respondent state is thoroughly incompetent according to its own assertion, commission and omissions to conduct any such examination for the student of Class-XII conducted by the Central Board of Secondary Education as also the Indian School Certificate Board Examination."

6. The respondents-State has filed its reply on 31st January 2002 raising preliminary objections. Para-1 and 2 of the reply are quoted below:

"1. That the petitioners are seemingly aggrieved by the decision of the State Government of Chhattisgarh to discontinue with the system of Pre-Medical Test and Pre-Engineering Test of qualification examination for admission into Medical and Engineering Courses."

"2. That even though the policy decision to that effect has been taken by the State Govt. in exercise of its powers and in best interest of the students, system of education and State in general considering all relevant aspects of policy making, yet the petition is premature in as much as consequent upon the policy decision the State Government is yet to frame necessary rules for the purpose of admission to the aforesaid courses. The rules may provide adequate provisions and also safeguards for a just and fair treatment to all the students, applying for admission on the basis of examination conducted by Boards. The petition is in any case is premature."

7. The State however filed its return on 27th February 2002 and come forward with the stand that because of filing of the petition they could not frame Rules. Apart from this it is further stated that there is a Board of Secondary Education, which is doing its best. The concern of the State as reflected in the return is that the Chhattisgatrh is a tribal, dominated area and proper coaching is required for the students to participate and succeed in the pre medical examination. In para-1 raising preliminary submissions it is stated that "*Though the petitioners may have a right to be considered for admission into Medical Colleges, such right could be regulated by the rules for admission framed by the*

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*answering respondents in exercise of their rule making powers. The right of the petitioners to be considered for admission does not include legal right with them to command the State Government to regulate process of admission in particular manner, much less by holding a competitive entrance examination such as PMT. To hold or not to hold a common entrance examination is essentially a matter of executive and policy decision of the Government which is arrived at upon appreciation and consideration of all relevant circumstances obtaining in the State in holistic manner and consistent with the objects and duties guiding the State Government to make such decision. The petitioners however, cannot seek to curtail such right and powers of the State Government in regulating the process of admission. It is however, reiterated that the admission to Medical Colleges shall be made and all rules and procedures will be accordingly devised, based on merit of the respective candidates."*

In para-2 it is stated that "The answering respondents submit that while laying down the procedure for admission into Medical and Engineering courses the State is duty bound under the Constitution to bear in mind principles of and need for ensuring equality. The experience over a period of time has led to a general belief that the pre medical test, by virtue of affluence of the candidates to afford coaching has generally been helpful to such privileged students who could receive specialized coaching and that too in urban areas. By virtue of specialized coaching they can secure higher marks in the common entrance test and those who do not have the capacity and opportunity for such

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specialized coaching namely less privileged class of society in rural area or even in urban areas, suffer unequal treatment and de-privation of equal opportunity before law. Therefore, whether the pre medical test can be a real and meaningful means of the testing intelligence of a student remained a highly doubtful proposition. While it is necessary to make the admission merit based, it is equally essential and obligatory on the part of the State Government to make opportunity for admission equal and to provide an equal level playing field for all the students irrespective of their socio-economic advantages or disadvantages. Such essence of decision of the State Government of policy making lies in the domain of governmental functions which is not justiciable."

8. In reply to the para 5.5 of the petition, State has submitted that "*In fact the cabinet decision for abolition of PMT and PET has been taken in the State in February, 2001 but the same had been kept in abeyance for one year as students had claim to be preparing for the PMT and PET.*"

9. On 31st January, 2002 an application has been filed on behalf of Interveners Shri Shailesh Nitin Trivedi,Civil Engineer R/o Baloda Bazar, Raipur, Dr. Shiv Kumar Daharia, BA MS Ayurvedic Doctor,R/o Telebandha Raipur, Shri Shyam Lal Maravi of Balco Nagar,Korba, Shri Balak Ram Patel R/o Kharasia, Raigarh and Shri Anil Kumar Khobragade R/o Dillihi Rajhera, Durg in opposition of the petition. The interveners opposed the

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petition on the ground that the students studying in rural area as well as in the tribal areas of the Chhattisgarh State are facing number of difficulties as compared to that of students studying in the schools located at urban areas. In para-5 they have stated that it is the matter of common experience that most of the prestigious schools of the Chhattisgarh are located in the city centers, which are well beyond the reach of the poor students who are pursuing their studies in rural areas. The students studying in urban areas are comparatively well off and come from sound financial back ground who are used to take the coaching from the reputed coaching institutions which are also established in the cities and therefore they are bound to get success in the entrance examination as compared to the students who have completed their schooling in the rural areas and who are deprived of those facilities and advantages. In para-6 it is stated that in PMT for admission in MBBS and other courses students will be required to solve objective type questions and that has to be answered by choosing options. In para-8 it is stated *"That the interveners respectfully submits that the obvious reason for the scheme of holding the entrance examination is variation of standards of the qualifying examination as the standard of examination and percentage of the marks secured by students at different type of examination at the higher secondary stage can not be treated as uniform. The percentage secured at different examination are said to vary according to the standard applied by each examining bodies and therefore system of common been in vogue."* In para-10 they have stated *"The*

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*pre Medical Test is designed in a manner that those students who have received specialized coaching are likely to secure higher marks in this test. Whether the PMT actually test the intelligence of the students is a matter, which can be debated. However, there is no doubt about the fact that students of disadvantaged communities living in remote area, where specialized coaching is not available are certainly placed at a disadvantage in this test as compared to the students who belong to the urban elite. As a matter of fact, a whole coaching industry thrives in the State because of the test.*

10. The first contention raised by the counsel for the State is that the petition is pre mature. This contention was raised in the preliminary submission and reiterated. The respondents' own case in the reply as well as return is that the decision has been taken to abolish the system of pre medical test. The preliminary objection and the return go to show that the policy decision has been taken and Govt. has yet to frame the necessary Rules for the purpose of the aforesaid courses. In the press clippings it was stated that the Rules would be framed within 10 days. The Rules have not so far been framed though sufficient time has elapsed. The students are in dilemma. Having considered the facts and circumstances and the material on record in the opinion of this Court this contention that the petition is premature is not sustainable.

11. Learned counsel for the State submitted that the pleadings especially para 6.6 of the petition making

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allegations are not correct and have no basis. It is contended that the pleadings are scandalous and accusation has been made without any basis. This Court has noted in the earlier order-sheets about the allegations and the accusation made in para 6.6 are concerned. On 2.4.2002 Shri Sandeep Dubey, learned counsel was pointedly asked, but no satisfactory reply of making such wild allegation is given. The petitioners have filed an application for clarification, which was not supported by any affidavit. These allegations made against the state are struck off. The press clippings have been filed but affidavit in support of these allegations have not been filed. The petitioners have not stated that they have verified about these press clippings, even otherwise Annexure P/3 newspaper report goes to show that the 2000 cases of copying (malpractice) were reported. These cases could be reported because the Board of Secondary Education and its employees in spite of limited resources worked hard and deserves appreciation.

12. The State Govt. functions through its instrumentality, higher secondary examinations are conducted by the Board of Secondary Education, which is a statutory body, the prayer for conducting the examination of PMT is through a body known as 'Professional Examination Board'. The allegations made against the State regarding functioning of its functionaries have no basis and as such these allegations made regarding the competency for holding of examination are rejected more so when Secondary Board is not joined as party.

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13. In the petition under Article 226 for issuance of writ for enforcement of fundamental rights, legal and such other rights, conferred by Part-III and for any other purpose, the petitioner has to carefully plead the case.

14. The allegations made in Para 6.6 of the petition in the opinion of this Court are vexatious and without any basis. Shri Sandeep Dubey, learned counsel for the petitioner submitted that he feels sorry and further submitted that he restricts his case only to the legal submissions in view of the judgment of the Apex Court mainly in the case of Ravindra Kumar Rai(Supra). The accusation and allegations made in the petition, which contain vexatious averments, especially para 6.6 insinuations, & innuendos are not pressed and struck off.

15. So far as the matter relating to holding of the examination for the year 2002 is concerned in the opinion of this Court the matter is squarely covered by the decision of Apex Court in the case of Ravindra Kumar Rai Vs. State of Maharashtra and others, reported in (1998) 3 SCC 183. In that case also there were three Boards in Maharashtra State conducting qualifying examination and there were several universities. The Hon'ble Supreme Court considered the entire matter. Paragraphs 6,7,8 and 9 are relevant which are quoted below:

*"6. We may at the outset point out that in as much as there are three Boards in Maharashtra State which*

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*conduct the qualifying examination and in as much as there are several universities, the State of Mahrashtra would clearly fall under sub-clause (2) of Regulation 5 made by the Medical Council and not under sub-clause (3). The contention for the State that candidates from C.B.S.E. Board are small in number does not appeal to us. Inasmuch as there is no dispute that more than one Board conducts the qualifying examination and the Universities are more than one in number, sub-clause (3) of Regulation 5, in our view, is not attracted. It is also not possible for the State to say that conducting a common entrance examination will delay the admission process or that it will be extremely difficult to conduct the examination. In fact, the statement in the counter affidavit to the effect that the State has been conducting a common examination for 1,80,000 at the 10+2 level in the 7 divisional boards would itself show that the State is capable of conducting a common entrance examination for admission to medical colleges, even if the number of students is large. We may also say that in several States, common entrance examination was being conducted even before 1997 when these regulations made by the Medical Council came into force. In fact in some States, entrance Examination is conducted jointly for engineering and medical students also. We fail to see why the State of Mahrashtra should say that it will be an arduous task.*

*"7. In a recent judgment of this Court in Shri Chander Chinar Bada Akhara Udasin Society v. State of J & K in the context of admission to medical colleges and the need for a common entrance examination, this Court observed as follows:*

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*"It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the state level, others at the national level including the Indian School Certificate Examination. The percentage secured at different examinations are bound to vary according to the standard applied by such examination bodies which is well known. As such a common entrance examination has to be held."*

*It has been therefore held that a "common entrance examination" for admission to medical colleges has to be held.*

*"8. We next come to the contention of the respondent based upon Article 371(2)(c ) of the Constitution of India. That Article permits the Governor to require an equitable arrangement to be made for providing adequate facilities for "technical education and vocational training" in respect of the areas Vidarbha, Marathwada and the rest of Maharashtra. Assuming that the medical education falls within the scope of the said Article, we do not think that compliance with Regulation 5(2) of the Regulations made by the Medical Council of India will in any manner come in the way of giving effect to the provisions of article371(2)( c).*

*"9. Finally, it was argued for the respondent that, in any event it will not be possible to conduct a 'common entrance examination' for the academic year starting from 1998 in as much as, just now the time available is too short. We cannot agree. These regulations have come into force as long back as on 4.3.1997. There is, in our*

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*view, sufficient time available and all that is necessary is that the State must immediately draw up the programme and timetable for conducting the common entrance examination for the year 1998 and for the other steps in that behalf."*

In para-10 the Apex Court allowed the writ petition and directed the State of Maharashtra and its Medical Education Department to start the process for holding the common entrance examination for admission to medical colleges in Maharashtra for the year 1998 and conduct the said examination. This decision of the Apex Court is applicable with full force in the instant case and squarely covers the legal questions in the opinion of this Court.

16. It is reflected in para-2 of the Return filed by the State that the experience over a period of time has led to the Govt. to a general belief that the pre medical test, by virtue of affluence of the candidates to afford coaching has generally been helpful to such privileged students who could receive specialized coaching and that too in urban areas. By virtue of specialized coaching they can secure higher marks in the common entrance test and those who do not have the capacity and opportunity for such specialized coaching namely less/under privileged class of society in rural areas or even in urban areas, suffer unequal treatment and de-privation of equal opportunity before law.

17. In the return while replying para 5.4 the respondents have referred to the decision of Apex Court in the case of

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Ravindra Kumar (supra) and the judgment referred therein in the case of Shri Chander Chinar Bada Akhara Udasin Society v. State of J & K, reported in (1996) 5 SCC 732 . The State Government though stated in the return but has not at all been able to place any material that the ratio of the judgment of the Hon'ble Supreme Court is not applicable. It will be appropriate to quote the relevant portion, which is as under:

"The ratio of this judgment of the Hon'ble Apex Court are differing standards of different qualifying examination. Government of Chhattisgarh has taken care of this difference in standards. Government has decided to keep separate quotas of seats in MBBS Course for eligible applicants passing the qualifying examination from different Boards and Examining Bodies. These seats will be kept in proportion to the number of eligible applicants who have passed the qualifying examination conducted by these Boards and Examining Bodies. Thus the students who pass the qualifying examination from one Board of Examining Body will compete with only those who have taken the same examination. The question of treating all examinations as uniform therefore does not arise. Obviously the judgment which has been cited is distinguishable."

Having thus considered, even in case of Chhattisgarh State, more so when the Rules have not been framed, the judgment passed by the Apex Court in the case of Shri Chander Chinar Bada Akhara Udasin Society v. State of J & K, reported in (1996) 5 SCC 732 and Ravindra Kumar Rai (supra) applies with full force and the decision not to hold the examination for 2002 is not

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sustainable. The State has failed to produce any material that the said judgment is distinguishable.

18. The State of Chhattisgarh has shown a great concern so also the interveners about Coaching Institutions. So far as coaching institutions are concerned a Division Bench of this Court has dealt with the matter in W.P.No. 847/2001 (Sardar Jaswant Singh Ajmani Vs. Public Service Commission of M.P. & others). Para 21 of the said order is relevant and quoted below:

" Learned counsel submits that certain coaching institutions like the present one Tuteja Coaching Institute are doing on commercial undertaking and students are allured. It is submitted that the Tuteja Institute has submitted certain document against the interest of candidates. In some cases photographs have also been appended. The institute has to be very careful. We do not wish to deal much on this aspect in the matter. It is noted that many coaching institutes are coaching in any outside the State. Even in respect of Primary, Nursery and Higher Secondary Schools and colleges, permission is required. They are governed by statutes, rules & regulations and byelaws formed by respective States and Central Governments. Even private schools and colleges are governed and standard and qualifications are prescribed. It appears that there is no check over persons carrying on coaching institutions. The competition is increasing day by day. Many of the students and candidates are allured by advertisement or otherwise and huge profit earned. It has become commercial activity without any check from any quarter.

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The Governments both Central and State will be well advised to consider all these aspects and appropriate legislation, rules and regulations and guidelines regarding qualification of teachers or coaches, availability of accommodation, hostel facilities etc. be laid down and for that purpose thorough investigation be made. Coaching classes, if required, may be conducted by the Government, Universities, colleges and Institutions recognized for the purpose so that the candidates desirous of appearing in the competitive examinations may well be benefited and are not exploited by any one."

The State of Chhattisgarh may if so advised take such steps which may be warranted.

19. Dr. N.K.Shukla, Additional Advocate General appearing for the State of Chhattisgarh submits that the State has great concern for the socio-economic condition of new State of Chhattisgarh coupled with predominantly tribal inhabited population as well as presence of socially, economically and educationally backward class of people. It is also submitted that the State owes a constitutional duty under Article 15(4) of the Constitution of India to make adequate provision for reservation and improvement of their lot and upliftment. It is pointed out that the lack of opportunity is because of social and economic condition of the people. It is also submitted that being a State of tribal and backward coaching facilities are not available. So far as the concern of the Govt. in this respect is concerned the State may take such steps in accordance with law,

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which are warranted. The students of downtrodden, Scheduled Castes, Scheduled Tribe, other backward classes and weaker sections of rural areas and all others who are desirous of getting admissions, the State may give them suitable encouragement, incentives, scholarship, literature and books. The present age is competitive one, suitable centers if desire may be opened at the district head quarters or such other places, which the State thinks just and proper. The tribal districts and the areas are there and the facilities may if so desire be provided at divisional head quarters or district head quarters. The interveners who have such concern may also take such steps deem fit and proper. This Court has no doubt that the State would take such steps even this year for those who are qualified and desirous to get admission. It is more so urgent as the State in para-4 (reply of para 5.5) of the return has stated that the decision has been taken long back but the same has been kept in abeyance for one year, it is therefore just and desirable that whatever time has lost but now the time left be taken due care and immediate steps be taken.

20. It is stated in the return that the merit of Class-12th will be considered. The merit of Class-12 cannot be forejudged which will depend on the performance of the students. Today it cannot be said that the person of rural area or urban area will top in merit list. It is also pointed out by Shri Sandeep Dubey, learned counsel for the petitioners and has been cumulatively filed as Annexure A/1(filed with I.A.No. 772/2002) which is a

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comparative chart regarding Syllabus of subjects "Physics", "Chemistry", & "Biology" for C.B.S.E., I.S.C.E. and Chhattisgarh H.S.S.C., which according to the petitioner demonstrates that it is physically or otherwise not possible to equate the relevant merits of the students studying in three different courses for marking without holding any unified entrance examination like the PMT. This assertion of the petitioners needs verification and expert opinion of the subjects and as such this may also be considered and the differences in various syllabus as pointed out may also be considered by the State through experts on the subject in the light that these three different syllabuses of C.B.S.E., I.S.C.E. and Chhattisgarh H.S.S.C. do have uniform units with each other or not.

21. Having thus considered the matter in the opinion of this Court the ends of justice is served if a direction is given to the State to conduct a Common Entrance Examination for this year 2002 and since sufficient time is elapsed, required steps shall be taken as early as possible without causing unnecessary delay.

22. Dr. N.K.Shukla, Additional Advocate General appearing for the State submitted that on formation of the State of Chhattisgarh the State got only one medical college at Raipur, within a period of one year it has established another medical college at Bilaspur and a dental college at Rajnandgaon so as to cater the needs. Learned counsel for the State and Interveners submitted that much development has taken place after formation of

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the new State and the colleges etc. have been established. This Court appreciates it, but much more has to be done in tribal dominated areas and more efforts would make this State progressive one as the developmental avenues are available along with mass awakening. It is high time that the State should explore the possibilities of opening medical colleges at Bastar, Sarguja, Raigarh or at such other places which it may think fit and proper. The Para-medical courses are equally important and such courses may be opened in such areas, which may be identified by the State. The State may take help of print and electronic media in imparting tutorials in tribal and rural areas as well for awakening the students.

23. So far as the anxiety of the State is concerned and giving motivation incentive to the S.C/S.T. Backward Classes, weaker Sections of the society and rural areas are concerned; the State has means and may utilize its instrumentality to motivate such students who are desirous. It may make laws regarding coaching and further impart education; provide books, scholarship etc. which may deem fit and proper. The present age is competitive one and giving financial assistance, incentives, the object enshrined, the concern of the State as reflected in the return, the State may do its best and start process as early as possible, preferably within a period of two weeks from the date of production/receipt of certified copy of this order keeping in view all the aspects of the matter and that for the year 2002 much time has already lapsed by this date.

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24. In view of what has been stated herein above, this petition is disposed of.

25. This Court appreciates the valuable assistance rendered by Dr. N.K.Shukla, Shri Manindra Shrivastava, Shri Ashish Shrivastava and Shri Sandeep Dubey, learned counsel for the parties.

Sd/-
Fakhruddin
Judge

9.4.2002